Supreme Court of the United States

No. ——

PETITION FOR REHEARING

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. 770

THOMAS D. GOSS, also known as THOMAS DUGGAN,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondents.

PETITION FOR REHEARING.

To the Honorable Earl Warren, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Thomas D. Goss, also known as Thomas Duggan, respectfully prays for a rehearing of the order of this Court dated April 17, 1961, denying his Petition for a Writ of Certiorari to the Supreme Court of Illinois.

BASIC FACTS.

Petitioner was convicted of an indirect criminal contempt for statements he made on his television program in connection with a temporary child custody hearing in a pending divorce case. His remarks referred to offers made to him to keep his name out of the divorce case and custody hearings if he would "lay off" the hoodlums on his television show and other remarks made after the

witnesses had testified in the custody hearing that one of the witnesses, a private detective was a professional sneak and liar and that two other witnesses who were relatives of the plaintiff were associated with known hoodlums (a fact which was general knowledge to anyone who reads the newspapers).

The petitioner was found guilty in his first trial by the trial judge who had heard the custody question. Petitioner had requested a change of venue and said that his constitutional rights to free speech and press under the 14th Amendment to the Constitution of the United States were being denied. On appeal to the Supreme Court of Illinois, that Court reversed because of the failure to grant a change of venue, but at the same time held that petitioner was guilty of contempt because his remarks constituted a clear and present danger to the administration of justice. On petitioner's second trial, he was again denied a change of venue and the trial judge saying he was bound by the decision of the Supreme Court of Illinois in the first appeal refused to change any of the rulings on offers of proof made in the first trial and again found petitioner guilty of contempt. Petitioner again appealed to the Supreme Court of Illinois, but that Court said it had decided all constitutional questions in the first case and affirmed the trial Court. The petition for certiorari filed in this Court was to review the constitutional questions raised in the two cases before the Supreme Court of Illinois and the effect of the decision in the first Illinois Supreme Court decision on the trial of the instant case.

ARGUMENT.

I.

A CITIZEN HAS A PUBLIC DUTY TO EXERCISE HIS RIGHT OF FREE SPEECH TO MAKE DISCLOSURES OF DIRECT ATTEMPTS TO WRONGFULLY USE A PENDING CIVIL LAW SUIT AS A MEANS OF BLACKMAIL OR ATTEMPTS TO SUBVERT THE WELFARE OF A MINOR CHILD IN AN EFFORT TO AVOID ADVERSE PUBLICITY FOR WELL KNOWN GANGSTERS.

The facts in this case show that your petitioner offered to prove that an attorney, Anthony Champagne, in a child custody hearing, who was also an attorney for known hoodlums, and one Charles English, a person publicly known to be a hoodlum, had offered to keep petitioner's name out of the child custody hearing if petitioner would "lay off" the hoodlums on his television show.

Credence is given to petitioner's charges by the facts of the case. The original divorce suit was filed July 26, 1955, by Carl Champagne, charging his wife with extreme and repeated cruelty. Under Illinois law proof of at least two acts of physical cruelty is required to substantiate such a complaint. This complaint filed by a man in the peak of his physical powers throws doubt on the *bona fides* of this Complaint. This is especially true when the plaintiff, Carl Champagne, must have known prior to filing his complaint that his private detective, Risberg, would testify to facts that allegedly occurred on June 3 and 11, 1955, which he could use for charges of adultery.

It was apparent to the petitioner that this was a form of blackmail and that the welfare of a child although in issue in a pending civil case was not the goal of the plain-

tiff in the child custody hearings. As a citizen, especially one who commented week-nights over his television program; it was his duty to call to the attention of the States Attorney, the Judge of the pending case, the defendant in this pending civil case, and the public the methods used by the hoodlum element to accomplish their unlawful purposes. The petitioner did openly expose this unwholesome plot. The end result however was not an investigation, but the instant contempt proceedings in which all offers to prove this actual attempt to influence the administration of justice were refused. The telecasted remarks of the petitioner offered not a clear and present danger to the administration of justice but an effort to prevent a clear and present danger to the administration of justice. The petitioner was charged with making false statements and the order finding him guilty of contempt said he was guilty of making false statements, yet every offer by the petitioner to prove the truth of his statements which would show that someone else was interfering with the administration of justice was refused.

It is urged upon this Court that the refusal of the trial court to permit petitioner to prove the truth of his utterances indicated an overzealousness on the part of that Court to defend the dignity of the Courts without regard to the truth. This attitude of the lower court pervades the prosecution of the petitioner. It knew that the only protective shield petitioner had or could have was his own voice. It knew he could not intervene in the case nor did he have any right to appear as *amicus curiae*.

The boldness with which petitioner spoke seemed to be of great concern to the trial judge and to a lesser degree of the Court below. If his comments were true as he offered to prove, it is, we urge to his credit that he spoke clearly. As we view the matter, too many people look

to their own interests when obvious injustice is being perpetrated which if they extend themselves might be avoided. As we read this record the cause of appropriate administration of the law would have been thwarted had not the petitioner been boldly vocal.

II.

INTERVENING CIRCUMSTANCES SHOW THAT THE RESULT OF THESE ILLINOIS DECISIONS LEAVES THE LAW IN ILLINOIS IN A STATE OF FLUX AND CONTRARY TO THE LAW OF THE LAND.

An example of this is a recent intervening and pending case in the Village Court of Maywood, Illinois. The Chicago Daily Tribune in its editorial of May 8, 1961, had this to say about that case:

"FREEDOM TO CRITICIZE

"In our system of government, full discussion and full reporting of government affairs are recognized as essential. Public officials especially ought to be free to criticize other public officials. The public interest in such discussion is so great that the higher courts have always been reluctant to deter a legislator from speaking—even from speaking irresponsibly.

"For these reasons the recent behavior of Judge Robert E. McAuliffe of the Maywood Village court is a matter of concern to citizens outside the boundaries of that suburban community.

"Recently the judge haled into his court Paul Coffman, editor of a local weekly newspaper, and ordered him to produce the original of a letter which Coffman had published. The letter, written by Walter Hathaway, a trustee of the village of Maywood, strongly criticized the administration of the court.

"The editor refused on the ground that the subpena calling for surrender of the letter was faulty in that

no cause of action was listed on the document. This was something more than a technical, legalistic defense. It would be intolerable if a court could force a citizen to produce his records without showing any reason. Nevertheless Judge McAuliffe found Editor Coffman guilty of contempt and clapped him into jail for four hours, until he was released on an appeal bond.

"New charges of contempt were placed against both Coffman and Trustee Hathaway. They asked for a change of venue, which was denied, in spite of a recent Illinois Supreme court decision which clearly supported their plea.

"Editor Coffman then was found guilty of contempt for publishing the letter and fined $1. The judge vacated his original contempt sentence, thereby confessing, in effect, that his subpena had been improper. Two sentences for contempt were imposed on Trustee Hathaway. He was sentenced to 10 days in jail and fined $100 for writing the letter and also was found guilty of contempt for filing with the court a copy of a statement asking for an investigation of the court, which he had filed with the Maywood village board a year ago.

"The Maywood village board deals with small affairs, compared with the legislation before Congress, but the members of the board have the same rights as congressmen to discuss freely what they think about government matters, including the operation of courts. Any citizen has a right to criticize a judge. The Illinois Supreme court has held that libel or slander of a judge is not punishable by contempt proceedings; if he has been wronged he must sue for redress like any other citizen.

"The only time a judge may punish for contempt is when there is a clear and present danger of interference with the orderly administration of justice. Trustee Hathaway's letter contained no reference to any

case pending before Judge McAuliffe. The only case referred to in the letter was one involving seven Maywood school board officials who, on the eve of a recent election, were charged with misusing funds. Judge McAuliffe has disqualified himself from hearing these charges. . . ."

CONCLUSION.

Your petitioner beseeches your honors to reconsider the petition for Writ of Certiorari in this case. Not only does he have a cause involving a (Telecaster's) citizen's right to freedom of speech which was denied him in the Illinois Supreme Court in two decisions, but he contends and will prove with your Honors' permission that the Illinois Supreme Court overruled decisions on "clear and present danger" doctrine as set down in this Court in cases cited in his Petition for a Writ of Certiorari.

Also not only is the present case at bar a matter of first impression, but novel, bizarre, and touches freedom of speech and basic American Civil Rights.

All petitioner asks is to have his day in Court which has been denied him in 6 years of appeals and legal frustration in the lower and upper Courts. Petitioner believes that when your Honors see the full record in this case, no matter what you may think of the defendant at the bar personally, you will be happy that you reconsidered. Petitioner thinks and knows that your Honors will come to the unanimous conclusion that the Civil and Constitutional Rights of a citizen were trampled upon.

Ten days in jail and a nominal fine is not the main question. Justice for others who follow the relator are of sufficient importance that the costs of the appeals are no longer prohibitive when considering the future.

We still live in a democracy where FREEDOM OF SPEECH THAT DOES NOT ENDANGER JUSTICE and does not stop the wheels of justice from moving is permissible and petitioner prays a decision protecting this right will not be shirked by the greatest tribunal in the world which he considers this Court whether the Writ of Certiorari is or is not awarded.

Petitioner beseeches this Court not to ignore this case and allow a lower court and the Illinois Supreme Court to hand down two decisions overruling in effect this, the Supreme Court of the United States.

A citizen of the United States comments a number of times on a pending child custody hearing; the trial judge, a man of fortitude by his own admission, carries on his own contempt case hearing, denies a change of venue, ignores the points raised by the citizen commentator, that his remarks did not constitute a clear and present danger and that he was in fact trying to call to the Court's attention someone else's efforts to thwart justice, and in the proof of the case refuses the commentator citizen the right to prove that attempts had been made by recognized hoodlums to interfere with the judicial system as we alluded to in our Petition for Writ of Certiorari heretofore filed before your Honors and in the additional point raised in this petition for rehearing.

The Illinois Supreme Court allows a change of venue saying Judge Covelli should not have tried the case, that the defendant is entitled to a new trial but in its decision still finds him contemptuous and in contempt of Court in

a void proceeding, and then binds the judge in the second trial to do likewise—a clear violation of the right to a fair trial without prejudgment and in direct conflict with the 14th Amendment of the United States Constitution.

Justice Black and Justice Douglas indicated by their dissent that they were in favor of giving your petitioner his day in Court which he has not had ironically in 6 years. Petitioner assures your Honors that you will not have a more interesting case involving a violation of civil and constitutional rights in your careers if the Petition for Writ of Certiorari is granted.

Respectfully submitted,

EDWIN R. ARMSTRONG
Attorney for Petitioner

Of Counsel:
SOL R. FRIEDMAN,
I. S. FRIEDMAN

CERTIFICATE OF COUNSEL.

The undersigned, EDWIN R. ARMSTRONG, attorney for petitioner hereby certifies that the Petition for Rehearing in this cause is presented in good faith, and that in his judgment said petition is restricted to grounds specified in Section 2 of Rule 58 and that said petition is not interposed for delay.

EDWIN R. ARMSTRONG
Attorney for Petitioner